

NEWMAN | WILLIAMS

A PROFESSIONAL CORPORATION

Gerard J. Geiger, Esq.
IDENTIFICATION NO. PA44099
712 MONROE STREET
P.O. BOX 511
STROUDSBURG, PA 18360-0511
(570) 421-9090 (voice)
(570) 424-9739 (fax)
ggeiger@newmanwilliams.com

Attorneys for Defendants: Carbon County Board of Elections, Monroe
County Board of Elections, Pike County Board of Elections, Snyder
County Board of Elections, and Wayne County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC
PARTY, *et al.*,
Petitioners

v.

KATHY BOOCKVAR, *et al.*,
Respondents

No. 407 MD 2020

Election Matter

**Response to Application for An Expedited Discovery Schedule
and Evidentiary Hearing by Respondents,
Carbon County Board of Elections, Monroe County Board of
Elections, Pike County Board of Elections, Snyder County Board
of Elections and Wayne County Board of Elections**

The respondents, Carbon County Board of Elections, Monroe County
Board of Elections, Pike County Board of Elections, Snyder County Board of
Elections and Wayne County Board of Elections, answer the Petitioners’
Application for An Expedited Discovery Schedule and Evidentiary Hearing
as follows:

The respondents agree that expedited relief is necessary given that the presidential election is less than four months away. While they have no plan on using procedures that are constitutionally infirm, or in violation of Pennsylvania election law, since the matter has been raised both in this court and in a filing in the U.S. District Court for Western District of Pennsylvania (Civil Action No. 2:20-cv-00966), a prompt ruling is necessary. A hearing is not.

Respondents offer the following:

1. The constitutionality of Pennsylvania's election law is a legal issue requiring no discovery. If any of the parties demand discovery, they should be required to make an offer of proof as to the necessity of discovery and why the Court needs such discovery to make a ruling.
2. Permitting additional drop-off locations for ballots is widely utilized in states with no-excuse absentee voting. Colorado, Oregon, and Washington require drop boxes be established for mail ballot return, and several other states (including Arizona, California, Kansas, Montana, Nebraska, New Mexico, and Utah) have long permitted drop boxes in some or all their counties. *Nat'l Conf. of State Legislatures, Voting Outside the Polling Place*, Tbl. 9 (Apr. 27, 2020), available at <https://www.ncsl.org/research/elections-and->

[campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx](#). The constitutional use of drop boxes should not be an issue requiring discovery or a hearing. If the court thinks a clarification on their use is appropriate, discovery is not necessary to make such a ruling.

3. If “secrecy” envelopes are required to credit a ballot, this is a legal issue based on an interpretation of current law, requiring no hearing.
4. The constitutional use of poll watchers limited to those who reside in the county in which the watcher is a qualified registered elector, is a legal issue. The constitutional right to create such a limitation as already been judicially established. *Rep. Party of Penn. v. Cortés*, 218 F. Supp. 3d 396, 406-09 (E.D. Pa. 2016).
5. The Trump campaign and others are seeking contrary relief in the U.S. District Court for the Western District of Pennsylvania and in that case, as well as this one, there have been requests for discovery.
6. The discovery requests in both lawsuits are entirely unnecessary. This Court may fashion a rule as to what is a constitutionally and lawfully appropriate way to conduct the November election without hearing testimony as to what happened in the primaries or what the Counties currently have planned for the November election.

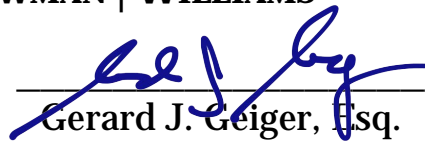
7. The Counties seek guidance on the interpretation of the law.

Discovery is entirely unnecessary for the Court to make such a ruling.

8. As a final note, in the federal lawsuit in the Western District of Pennsylvania, the defendants have moved to dismiss that case based, in part, on the argument that the Western District does not have venue over claims against Counties in the federal Eastern and Middle Districts. If the Western District agrees with the request that it transfer that case to the Commonwealth Court, there may be additional parties who will participate in this case.

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By: _____




Gerard J. Geiger, Esq.
Attorney ID: PA44099

Date: July 27, 2020

Certificate of Service

I hereby certify that on this date, a copy of this document was served on all counsel of record through the court's electronic filing system.

NEWMAN | WILLIAMS

By:  _____
Gerard J. Geiger Esq.
Attorney ID: PA44099

Date: July 27, 2020